

Appl. No. 10/820,590
Docket No. 9031R
Amdt. dated February 20, 2008
Reply to Office Action mailed on August 22, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1-3 and 5-23 are pending in the present application.

Claim 1 is amended to add "a mixture of a." Support for the amendment is found, for example, at page 13 of the specification.

In addition, new Claims 17-23 are added. Support for claim 17 can be found, for example, in the specification at Fig. 8. Support for claims 18 and 19 can be found, for example, at page 4. Support for claims 20 and 21, can be found, for example, at page 10 and Fig. 7. Support for claim 22 can be found, for example, at page 12. Support for claim 23 can be found, for example, at page 7.

Claims 13-16 have been withdrawn as a result of an earlier restriction requirement.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §103(a) Over Godbey in view of Sagel

Claims 1-3, and 5-16 have been rejected under 35 USC §103(a) as being unpatentable over U.S. App. Pub. No. 2002/0187181 (Godbey) in view of U.S. Pat. No. 5,891,453 (Sagel). This rejection is traversed for two reasons. First, Godbey in view of Sagel does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of amended claims 1-3 and 5-16. Therefore, the claimed invention is unobvious and that the rejection should be withdrawn.

As understood, Godbey does not teach or suggest all of the claim limitations of Claims 1-3 and 5-16 and, therefore, does not establish a *prima facie* case of obviousness (see MPEP 2143.03). Specifically, Godbey does not teach a tooth whitening composition comprising a mixture of a first and second polymer wherein said first polymer is polyethylene oxide and said second polymer is polyvinyl alcohol. The Office Action states Godbey teaches that both the adhesive and carrier compositions use cold-water

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soluble polymers and therefore concludes that the polymers disclosed for the carrier can be used in the adhesive and vice versa.

Contrary to the above assertion, it is respectfully submitted that Godbey does not teach that all cold water polymers used in the carrier may also be used in the adhesive layer. Actually, when discussing the adhesive, Godbey states that "[c]ertain adhesives suitable for use in the present invention may be cold water soluble" (page 4, paragraph 35). Then, Godbey goes on to give examples of polymers suitable for use in the adhesive (page 4, paragraph 36). Comparing this list to the one for the carrier (page 3, paragraph 24), there is some overlap of polymers listed (like polysaccharaides and polyvinyl pyrrolidone) but not complete overlap. Because Godbey teaches that only "certain" cold water soluble polymers may be used in the adhesive and lists only "certain" polymers as being capable of being used in the both the carrier and the adhesive, it is submitted that one skilled in the art looking at this teaching would not believe that all of the polymers taught as useful as carriers could be used as adhesive and vice versa.

Then, the Office Action went further and stated that even if the polyoxyethylene is not among the polymers which may be used as a carrier or polyvinyl alcohol is not one of the polymers that may be used in the adhesive layer, the adhesive composition and the carrier compositions may be considered one whitening composition comprising two polymers just in two different layers. This, however, does not teach a "tooth whitening composition comprising a mixture of a first and second polymer...wherein said first polymer is polyethylene oxide and said second polymer is polyvinyl alcohol" (independent claim 1). In fact, in examples 12 and 13 where there is active in both the carrier and the adhesive Godbey states "[t]he carriers were then laminated to the adhesive to give tapes sandwiched between two polyester support layers. The laminates seemed to be quite stable with no migration of plasticizer between the two layers apparent" (page 7, paragraph 68). Thus, where the adhesive and carrier layers of Godbey both contain actives, there does not appear to be any mixing of the components of the two and that Godbey only considers these compositions to be stable when there is at least no migration of the plasticizer.

Because Godbey fails to teach all of the claim limitations of amended claim 1 and Sagel fails to alleviate the deficient teaching of Godbey, Applicants submit that

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independent claim 1 and all claims dependent thereon are nonobvious over Godbey in view of Sagel. Reconsideration is respectfully requested.

Rejection Under 35 USC §103(a) Over Godbey in view of Sagel further in view of Xu.

Claims 9-10 have been rejected under 35 USC §103(a) as being unpatentable over U.S. App. Pub. No. 2002/0187181 (Godbey) in view of U.S. Pat. No. 5,891,453 (Sagel) further in view of U.S. App. Pub. No. 2002/0187111 (Xu). This rejection is traversed because, as stated above, Godbey in view of Sagel does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of amended independent claim 1. Additionally, Xu does not fill the void in the teachings of Godbey and Sagel as the Office Action states that Xu "differs from the instant claims in so far as it does not disclose a second polymer such as polyvinyl alcohol" (page 6). As Godbey in view of Sagel further in view of Xu fail to teach all of the claim limitations of independent claim 1 and claims 9 and 10 depend from claim 1, Applicants submit that the combination of references additionally fail to establish a *prima facie* case of obviousness for claims 9 and 10. Applicants submit that claims 9 and 10 are nonobvious over Godbey in view Sagel further in view of Xu and respectfully request reconsideration.

Newly Added Claims 17-25

Newly added claims 17-25 depend from independent claim 1. In light of the arguments made above regarding the failure of the Godbey in view of Sagel and Godbey in view of Sagel further in view of Xu to teach all of the claim limitations of claim 1, Applicants submit that newly added claims 17-25 are nonobvious over the cited references.

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Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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By

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